

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LEGENDARY INVESTORS GROUP
NO. 1, LLC,

Plaintiff and Appellant,

v.

DANIEL J. NIEMANN et al.,

Defendants and Respondents.

B284736

(Los Angeles County
Super. Ct. No. BC435774)

APPEAL from an order of the Superior Court of
Los Angeles County, Elizabeth R. Feffer, Judge. Affirmed.

The Soni Law Firm, M. Danton Richardson and Leo E.
Lundberg, Jr., for Plaintiff and Appellant.

Zimmerman, Axelrad, Meyer, Stern & Wise, Brian W.
Zimmerman, Nicholas Reisch; and Ernesto F. Aldover for
Defendants and Respondents.

Defendants Daniel J. Niemann, NPI Century City, LLC, and Niemann Properties, Inc. (collectively, defendants) were the prevailing parties in this long-running lawsuit filed by plaintiff Legendary Investors Group No. 1, LLC (plaintiff, Legendary). The trial court awarded defendants contractual attorney fees in the amount of \$1,047,313.72. Plaintiff appeals, contending the attorney fees award was excessive and unsubstantiated. We find no abuse of discretion and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This is appeal number six.¹ The facts and the procedural background for this litigation have been detailed in our earlier opinions. For the purposes of this appeal, the salient points may be summarized as follows:

Legendary purchased a defaulted commercial loan from an institutional lender. The loan was secured by a deed of trust on real property and guaranteed by defendants. The guaranty contracts included attorney fees provisions.

¹ Legendary filed four previous appeals, and defendants filed one. Legendary dismissed one appeal, and we issued opinions in the other four. (*Legendary Investors Group No. 1, LLC v. DB NPI Century City, LLC* (Aug. 21, 2013, B244646 [nonpub. opn.]); *Legendary Investors Group No. 1, LLC v. Niemann* (2014) 224 Cal.App.4th 1407 (*Legendary II*); and *Legendary Investors Group No. 1, LLC v. Niemann* (Oct. 9, 2018, B281915, B283352 [nonpub. opn.] (*Legendary III*)).) Legendary also filed three writ petitions, each of which we summarily denied.

A number of related superior court actions involving the same loan and real property were also filed, including at least one by the defaulting borrower, DB NPI Century City, LLC (DB NPI) (see part 3.d., *post*).

Legendary assigned the note, deed of trust, and guaranties to a wholly owned subsidiary, Legendary Century City, LLC (LCC). LCC foreclosed on the real property and purchased it for less than the outstanding loan balance. Legendary, not LCC, then initiated this lawsuit in 2010 against the defaulting borrower and defendant guarantors.

The trial court granted DB NPI's unopposed motion for judgment on the pleadings. Legendary's motion for summary judgment against defendants was denied. During the ensuing jury trial, the trial court granted defendants' motion for nonsuit at the close of Legendary's case-in-chief.

Legendary appealed. In a published opinion, this court reversed the judgment and remanded for a new trial. (*Legendary II, supra*, 224 Cal.App.4th 1407.) On remand, Legendary filed another motion for summary judgment, which the trial court denied. Legendary then filed a motion for summary adjudication as to ten of defendants' affirmative defenses. The trial court denied that motion as well.

In anticipation of the second jury trial, defendants' affirmative defense of unclean hands consumed considerable litigant and judicial resources. Legendary's three writ petitions were filed after the matter was remanded to the trial court, before trial began. By this time, Legendary claimed the balance due on the guaranteed obligation was more than \$8 million.

During the second trial, the pivotal issue was whether Legendary was the real party in interest with standing to bring this action. No one disputed Legendary's assignment of all its rights to LCC before the nonjudicial foreclosure. Surjit Soni, an attorney and member in Legendary, testified that LCC, post-foreclosure, orally reassigned the rights back to Legendary. Soni

was Legendary's sole trial witness, and no other evidence of a reassignment was presented.

The special verdict form asked the jurors whether Legendary reacquired "all the rights under [the] Commercial Guaranty contracts by way of [an] oral assignment from [LCC]." They answered, "no."

The usual and not-so-usual posttrial skirmishes followed. Legendary was unsuccessful in its efforts to add or substitute LCC as the true plaintiff, amend the complaint, or be granted judgment notwithstanding the verdict or a new trial.

Defendants, as prevailing parties in the action, sought contractual attorney fees in the sum of \$1,061,208.22. (Civ. Code, § 1717.)² Defendants supported the motion with declarations from attorneys Brian Zimmerman and Ernesto Aldover; voluminous billing records; and exhibits, including a chart that identified by date each attorney's hours billed, billing rates, percentage allocated to this case, and fees claimed.

Legendary's opposition included a declaration from its attorney, M. Danton Richardson, and written objections to statements in the declarations filed by defense counsel. Legendary argued defendants provided so much paperwork in support of the attorney fees request that it would consume too much time to "match up dates and billers' initials in order to determine what work is related to a particular amount. That is not a burden that should be placed on [Legendary or] this [c]ourt." Legendary challenged the attorneys' hourly rates and the number of hours billed. While Legendary did not complain about the number of attorneys in the out-of-state Zimmerman law firm who participated in the defense, it argued defendants'

² All statutory citations are to the Civil Code.

decision to retain Texas counsel was neither a necessary nor reasonable expense for which plaintiff could be liable. Legendary asserted some of the claimed attorney fees were incurred to represent DB NPI in its own lawsuit, not defendants in this action (see fn. 1) and had previously been asserted in support of DB NPI's request for attorney fees in another action.

Legendary characterized the issues in this litigation as straightforward and argued the trial court should apply a negative multiplier. Finally, Legendary quarreled with defendants' right to receive any fees at all. Although the standing issue was not resolved until the jury made the factual finding that LCC had not orally reassigned all rights back to Legendary, Legendary insisted defendants should have raised the standing issue years earlier. By failing to do so, defendants wasted court resources and unnecessarily prolonged the litigation; Legendary urged the trial court not to reward that conduct by awarding attorney fees.

The trial judge entertained arguments and delivered a comprehensive ruling from the bench. She first provided counsel with an overview of the case law, citing relevant decisions. She acknowledged the trial court's responsibility to "not simply award the sum requested, [but to consider] such factors as the nature of the litigation, complexity of the issues, the experience and expertise of counsel, and the amount of time involved." The trial judge was satisfied the hourly rates were reasonable and the division of labor between the various attorneys had been sufficiently documented. She observed the case was "at the extreme end of a heavily litigated case," which was "not saying this case was over-litigated or inappropriately litigated." The

trial judge noted the large amount of money in controversy and described the attorneys on both sides as “highly skilled.”

After advising counsel she had reviewed the records, the trial judge referred to exhibit 7 to the Zimmerman declaration (the chart summarizing the billing invoice entries and allocation of fees) and concluded 28 entries provided insufficient support for the claimed attorney fees. She also declined to award \$13,894.50 requested for work performed by attorneys Hillendahl and Tankersley because she “was unable to cross-reference their work.” After deducting those amounts, the trial court awarded a total of \$1,047,313.72 in fees. This sum included the \$20,000 defendants estimated they would incur for the attorney fees motion.

DISCUSSION

1. *Standard of Review*

Our standard of review for an award of reasonable attorney fees is abuse of discretion. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM Group*).) We are “highly deferential to the views of the trial court” (*Children’s Hospital & Medical Center v. Bontá* (2002) 97 Cal.App.4th 740, 777) and reverse only if we are “convinced [the trial court was] clearly wrong” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49).

As *Legendary* notes, had we reversed the judgment in defendants’ favor, reversal of the attorney fees award would follow without an abuse of discretion analysis. We recently affirmed the judgment, however; and *Legendary* has the burden to establish an abuse of discretion. (*Roth v. Plikaytis* (2017) 15 Cal.App.5th 283, 290 (*Roth*).)

2. *Applicable Law*

“[A] defendant who defeats recovery by the plaintiff on the plaintiff’s entire contract claim . . . is entitled as a matter of law to be considered the prevailing party for purposes of section 1717.” (*DisputeSuite.com, LLC v. Scoreinc.com* (2017) 2 Cal.5th 968, 973 (*DisputeSuite.com*)). The prevailing party on a contract “shall be entitled to reasonable attorney’s fees” as “fixed by the court.” (§ 1717, subd. (a).)

A request for attorney fees typically is couched in terms of a proposed lodestar figure, “i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate.” (*PLCM Group, supra*, 22 Cal.4th at p. 1095.) A trial court has discretion to adjust the lodestar “based on consideration of factors specific to the case, [thereby anchoring its] analysis to an objective determination of the value of the attorney’s services, ensuring that the amount awarded is not arbitrary.” (*Ibid.*) A trial court also is entitled to rely on “equitable considerations to reduce the lodestar” where unnecessary fees are requested. (*EnPalm, LLC v. Teitler* (2008) 162 Cal.App.4th 770, 778.)

The party seeking attorney fees has the burden to adequately document the attorneys’ hourly rates and number of hours. (*Roth, supra*, 15 Cal.App.5th at p. 290.) Although a request for attorney fees “should be documented in great detail” (*Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587), attorney fees based on a lodestar may be awarded even if not supported by timesheets or detailed billing statements; attorney declarations alone are legally sufficient (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1324). Moreover, trial courts “confronted with hundreds of pages of legal bills[] are not required to identify each charge they find to be reasonable or

unreasonable, necessary or unnecessary. The party opposing the fee award can be expected to identify the particular charges it considers objectionable. A reduced award might be fully justified by a general observation that an attorney overlitigated a case or submitted a padded bill or that the opposing party has stated valid objections.” (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101 (*Gorman*).)

3. Analysis

a. Legendary’s “Standing” Argument Fails

In the trial court, Legendary asserted defendants were obligated to raise the standing issue early in the litigation. Defendants’ failure to do so, Legendary claimed, resulted in seven years of unnecessary litigation for which defendants should not recover section 1717 attorney fees. The trial court disagreed, finding plaintiff bore the burden to prove standing and “[t]he defense [was] not obligated to point out lack of standing to plaintiff at an earlier point in the case so that plaintiff could correct the error within a much earlier period of time.”

Legendary filed its opening and reply briefs for this appeal without the benefit of our recent opinion in *Legendary III*. There, we rejected Legendary’s standing arguments and affirmed the judgment in defendants’ favor.³ We agreed with the trial court and held standing is a threshold issue and plaintiff “suing as an assignee must plead and prove the assignment to recover on the assigned claim.” (*Legendary III, supra*, B281915, B283352, typed opinion at p. 16.) We further held, “[b]ecause there were disputed

³ Our *Legendary III* opinion was filed October 9, 2018, the same day Legendary filed its reply brief in this appeal.

fact issues concerning standing, it was a question of fact for the trier of fact to resolve.” (*Id.*, typed opinion at p. 21, fn. 9.)

We reaffirm the *Legendary III* holding here: Legendary had the burden to prove by a preponderance of the evidence that it was the real party in interest entitled to sue defendant guarantors; defendants had no obligation to prove an entity other than Legendary had standing. Soni’s testimony concerning an oral assignment came late in the case and presented a factual dispute. Accordingly, the trial court did not abuse its discretion in rejecting Legendary’s argument that defendants unnecessarily prolonged the litigation.

**b. Attorney Fees Are Appropriately Awarded
When the Contract Dispute Is Finally Resolved**

Although Legendary concedes defendants were the prevailing parties, it argues they prevailed on a technicality, not the merits, and for that reason should not be entitled to attorney fees. California law is to the contrary. It matters not whether the defeat of plaintiff’s contract claim rests on procedural, rather than substantive, grounds. (*DisputeSuite.com, supra*, 2 Cal.5th at p. 981.) The critical factor is whether the prevailing party’s success is “dispositive of the contractual dispute.” (*Ibid.*)

**c. Defendants Adequately Documented the
Attorney Fees Request**

Legendary challenges defendants’ documentation to support the award of attorney fees. Plaintiff argues the bills included fees for work on other cases, and the chart with the fee allocation (exhibit 7 to the Zimmerman declaration) did not describe the work performed, so reviewing the allocation required

matching the billing entries with 1145 entries on the chart, which was unfairly burdensome. Plaintiff also contends many of the billing entries were heavily redacted, making it impossible to evaluate the reasonableness of the fees. Plaintiff asserts the attorney declarations were not based on personal knowledge.⁴ Legendary's arguments, however, are insufficient to establish an abuse of discretion.

Legendary always has been represented in this litigation by the same law firm that continues to represent it today. The Zimmerman firm joined the defense team in 2012, shortly before the first jury trial. More than 80 percent of the claimed attorney's fees were incurred in the last five years of litigation. As the trial court recognized, this heavily litigated, high dollar lawsuit generated thousands of hours of attorney time. Legendary's counsel was in the best position "to identify the particular charges it consider[ed] objectionable." (*Gorman, supra*, 178 Cal.App.4th at p. 101.) Rather than do so—as the trial court did—Legendary attacked the attorney fees request with a broad stroke. Legendary hews to this approach on appeal, and it is insufficient to demonstrate an abuse of discretion by a trial court that considered the billing attorneys' hourly rates and number of hours billed, reviewed the supporting documentation,

⁴ Lack of personal knowledge was not a stated ground for Legendary's objections in the trial court (either in writing or orally at the hearing on the attorney fees' motion) to the Zimmerman declaration. Accordingly, Legendary failed to preserve this objection for appeal. In any event, Zimmerman established personal knowledge by stating under penalty of perjury that he was lead counsel and personally reviewed and approved all billing entries in this case.

and took care to make a thorough record explaining the bases for the attorney fees award. (Contrast, *Gorman, supra*, at p. 101.)

d. The Trial Court Properly Rejected Legendary's Estoppel Argument

We briefly alluded in footnote 1 to related litigation involving this loan, the real property, and DB NPI. DB NPI sued Legendary in one such action (*DB NPI Century City, LLC v. Legendary Investors Group No. 1, LLC, et al.* (L.A. Super. Ct. No. BC 494921) (*DB NPI*)). The *DB NPI* action was proceeding at the same time as this litigation. The same law firms that represent defendants here represented DB NPI in its lawsuit; Legendary was represented by the same law firm that represents it in this lawsuit. In *DB NPI*, both sides claimed to be the prevailing party on the contract and sought section 1717 attorney fees. The trial court determined Legendary was the prevailing party and awarded \$2.4 million in attorney fees.⁵

The *DB NPI* order was filed more than one year before the trial court ruled on the attorney fees motion in this case. In support of this motion, defendants attached some of the same bills, with various redactions, that DB NPI submitted in its unsuccessful motion in the related litigation. Legendary argued in the trial court defendants should be estopped from recovering fees that were requested on behalf of another party in another action. Alternatively, Legendary contended defendants failed to demonstrate they appropriately allocated attorney fees between the two lawsuits and the various clients.

⁵ We take judicial notice of the pending consolidated appeals from that order, case Nos. B271089 and B277203.

The trial court rejected these arguments: “With respect to plaintiff’s contention that defendants submitted the same invoices in related actions, the court is satisfied with the evidence presented in the moving papers and in the declarations of counsel with respect to the timekeeping. [¶] Exhibit 7 to the Zimmerman declaration specifically identifies billing entries on the invoices that are related to these defendants in this case. The court finds that these records are sufficiently clear and detailed to allow for review, and that the evidence is sufficient. [¶] The court notes . . . plaintiff does not identify any specific entries in the documentation that are duplicative or unrelated to the prosecution of the action.”

Legendary reprises its arguments on appeal, but does not cite any specific invoice entries or demonstrate that any of the fees awarded in this action pertained to, or were awarded in, *DB NPI*. Legendary’s showing is insufficient to establish the trial court abused its discretion.

e. Attorney Fees May Be Incurred Pursuant to Section 1717 Without Proof of an Obligation to Pay

Citing *Dzwonkowski v. Spinella* (2011) 200 Cal.App.4th 930 (*Dzwonkowski*), Legendary also contends defendants’ failure to establish that they, rather than some other entities, had an obligation to pay the claimed attorney fees is fatal to the award. Legendary asserts that without a demonstrated obligation to pay, attorney fees are not “incurred” within the meaning of section 1717. The trial court rejected this narrow view, as do we. We also reject this characterization of the holding in *Dzwonkowski*.

Dzwonkowski involved a fee dispute between a client and his former attorney, who was a sole practitioner. (*Dzwonkowski, supra*, 200 Cal.App.4th at p. 933.) The attorney was represented in the fee dispute by a colleague, another sole practitioner, who was of counsel to the attorney's firm. The attorney prevailed and was awarded contractual attorney fees for his colleague's services. Citing *Trope v. Katz* (1995) 11 Cal.4th 274 (*Trope*), where the Supreme Court held an attorney representing himself is not entitled to § 1717 attorney fees, Spinella argued the award was improper.

The Court of Appeal disagreed and affirmed. It held, "The restriction on recovery recognized in *Trope* is a fairly narrow one" that yields to the "broad scope of the term 'incur'" in section 1717. (*Dzwonkowski, supra*, 200 Cal.App.4th at p. 937.) In reaching this conclusion, the appellate panel observed, "Whether fees are incurred is evidenced by an obligation to pay attorney fees, the existence of an attorney-client relationship, and distinct interests between the attorney and the client." (*Id.* at p. 935; see also *id.* at p. 938.) *Dzwonkowski's* statement linking an obligation to pay with the term "incur" as used in section 1717 must be considered in context, i.e., an attorney's request for fees in a lawsuit where the attorney was represented by a colleague who was "of counsel" to the attorney's firm, is not governed by a *Trope, supra*, 11 Cal.4th 274 analysis.

Not only did *Dzwonkowski* fail to graft an obligation-to-pay rule onto section 1717, it identified a number of appellate decisions that "broadly interpreted the term 'incur' as used in section 1717, subdivision (a)" and allowed attorney fees without proof the prevailing party was obligated to pay them. (*Dzwonkowski, supra*, 200 Cal.App.4th at p. 938.) Among the

opinions cited were *PLCM Group, supra*, 22 Cal.4th 1084, 1088, 1090 (prevailing party represented by salaried in-house counsel), *Beverly Hills Properties v. Marcolino* (1990) 221 Cal.App.3d Supp. 7, 9 (prevailing party represented by attorney who provided legal services on a pro bono basis) and *International Billing Services, Inc. v. Emigh* (2000) 84 Cal.App.4th 1175, 1192 (prevailing party whose employer pays for legal representation is entitled to attorney fees award).

In sum, an obligation to pay attorney's fees is not the sine qua non for an award of attorney fees pursuant to section 1717.⁶ The attorney fees order was made by an experienced trial judge with years of involvement in this lawsuit. The trial judge provided the parties and this court with a thorough explanation for the rulings, greatly facilitating appellate review. There was no abuse of discretion.

⁶ Legendary has not suggested the guaranty contracts themselves imposed an obligation-to-pay requirement to recover attorney fees. (See, e.g., *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1409 ["The lease does not require that defendant . . . 'incur' attorney's fees; rather, it provides that the losing party will pay reasonable fees as determined by the court"].)

DISPOSITION

The order awarding attorney fees is affirmed. Defendants are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

DUNNING, J.*

We concur:

MANELLA, P. J.

WILLHITE, J.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.